

EXHIBIT 22

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY FORTH, DONNA BAILEY,)
LISA BULLARD, RICARDO GONZALES,)
CYNTHIA RUSSO, TROY TERMINE,)
INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS LOCAL 38)
HEALTH AND WELFARE FUND,)
INTERNATIONAL UNION OF)
OPERATING ENGINEERS LOCAL)
295-295C WELFARE FUND, AND)
STEAMFITTERS FUND LOCAL 439,)
on Behalf of Themselves and All)
Others similarly Situated,)

Plaintiffs,)

vs.)

WALGREEN CO.,)

Defendant.)

) Case No.

) 1:17-cv-02246

The videotaped deposition of JOHN P. CATALANO,
taken before Maria S. Winn, CSR, RPR and CRR,
pursuant to the Federal Rules of Civil Procedure
for the United States District Courts pertaining
to the taking of depositions, at Reed Smith,
10 South Wacker Drive, Suite 4000, Chicago,
Illinois, commencing at 9:42 a.m. on May 9, 2019.

1 to the general public, including all type of
2 discounted programs.

3 Q So if -- do you know what "retail price"
4 means?

5 A I do.

6 Q And what is retail price?

7 A That would be the price that is
8 originally marked as the price for the consumer.

9 Q Prior to any discounts?

10 A Right.

11 Q And your understanding of the U&C, you
12 said, is the lowest cash price offered to the
13 public, including all types of discounted
14 programs.

15 What discounted programs are you thinking
16 about?

17 MR. ALPERSTEIN: Objection, form.

18 MR. ALBA: Define U&C.

19 A Anything available.

20 BY MR. LEIB:

21 Q You understand what U&C stands for?

22 A You asked me that already.

23 Q What does it stand for?

24 A Usual and customary. It's what I just

1 overcharged, they're going to indirectly pass that
2 down on to us, because we're the end -- at the end
3 of the day, we're the one who pays the bill.

4 Q Well, if -- would you agree that if the
5 Fund -- strike that.

6 If Express Scripts knows exactly how
7 Walgreens reports U&C, and Express Scripts
8 overcharges you under the contract, that your
9 grievance would be with Express Scripts, not with
10 Walgreens?

11 MR. ALPERSTEIN: Objection, form. Calls
12 for speculation.

13 A I don't see it that way.

14 BY MR. LEIB:

15 Q Why not?

16 A I have no control over the business
17 between Walgreens and Express Scripts. I can only
18 control my contract with Express Scripts.

19 Q And would you agree that the
20 definition -- strike that.

21 Would you agree that you don't know what
22 the definition of U&C is in Express Scripts'
23 contract with Walgreens?

24 A I've never seen it.

1 Q And the Fund's never seen it, correct?

2 A No. We would have no access to that.

3 Q So you have no idea if the Fund's --
4 strike that.

5 You have no idea if Express Scripts'
6 contract with Walgreens allows Walgreens to report
7 its U&C price as its retail price, right?

8 A I have no idea what Walgreens' contract
9 looks like with Express Scripts.

10 Q So the only thing that matters for
11 determining whether you, the Fund, were
12 overcharged, is what this contract with your PBM
13 allows, right?

14 A Say that again.

15 Q The only thing that determines whether
16 the Fund was overcharged is whether the PBM
17 followed the contract or not, correct?

18 A Well, I believe that the PBM did follow
19 the contract and we were still overcharged.

20 The PBM didn't violate the contract.
21 Otherwise, we wouldn't have an issue with them.

22 Q Would you agree that the definition of
23 U&C in this contract is binding on Express
24 Scripts?

1 statement: "At no point in time has Walgreens
2 charged the Fund anything"?

3 A I would agree with that.

4 Q So if we look at paragraph 38, which
5 says: "Through its fraudulent pricing scheme,
6 Walgreens has overcharged Plaintiff IUOE Local
7 295," that's not correct, right?

8 A I understand that to be in the third
9 party. That we were indirectly overcharged by
10 Walgreens through our PBM.

11 Q Well, we already established that your
12 PBM can pay a different price to Walgreens for the
13 drug than the PBM charges you for that drug,
14 right?

15 A Yes, we have.

16 Q And the PBM is required to charge you
17 what it is allowed to under the contract, right?

18 A Yes, they can.

19 Q They can't charge you any more than is
20 allowed under the contract, right?

21 A That is correct.

22 Q So if you were overcharged, you were
23 overcharged by the PBM, right?

24 MR. ALPERSTEIN: Objection, asked

1 BY MR. LEIB:

2 Q And in fact, they're allowed to charge
3 you, if it's the lowest of the three, the retail
4 price, correct?

5 MR. ALPERSTEIN: Objection.

6 A You just keep wording it that way.

7 They have to charge -- they have to offer
8 me the lowest price. What it's called is
9 irrelevant to me.

10 BY MR. LEIB:

11 Q They have to offer you the lowest of
12 those three prices?

13 A Of those three.

14 Q And if the U&C is the lowest of those
15 three things, they're allowed to charge you the
16 retail price, correct?

17 MR. ALPERSTEIN: Objection. You keep on
18 saying "retail price," but that's not the full
19 definition. You're cherrypicking words out of
20 the definition.

21 MR. LEIB: I'll change.

22 BY MR. LEIB:

23 Q If U&C is the lowest price of those three
24 things -- the ingredient cost charge, the MRA, and

1 the U&C -- and your PBM is allowed to charge you
2 the U&C as defined in your contract with Express
3 Scripts, correct?

4 A Yes.

5 MR. LEIB: I will hand you an exhibit
6 that we will mark as Exhibit 87.

7 (Document marked as Defendant's
8 Exhibit No. 87 for identification.)

9 BY MR. LEIB:

10 Q Do you recognize this document?

11 A Yes.

12 Q What is this document?

13 A This is a summary of my benefits, the
14 Fund's benefits.

15 Q This is a summary of the benefits your
16 members receive, right?

17 A But this looks like it's the lower tier
18 plan.

19 Q So there are two plans. There's the high
20 plan and the low plan, correct?

21 A Yes, there is.

22 Q And this is the low plan, right?

23 A It says low plan on the top. And I just
24 have to look to see if it has the dental.

1 MR. ALPERSTEIN: That you're referring
2 to?

3 A Yes.

4 BY MR. LEIB:

5 Q And after the board meeting where you
6 voted to join the lawsuit, what, if any, actions
7 did the Fund take other than agreeing to join the
8 lawsuit as a result of learning about Walgreens'
9 practices?

10 MR. ALPERSTEIN: Objection, form.

11 Go ahead and answer.

12 A None.

13 BY MR. LEIB:

14 Q Did it preclude its members from using
15 Walgreens?

16 A Absolutely not.

17 Q Did it take any steps to discourage its
18 members from using Walgreens?

19 A Absolutely not.

20 Q Did it tell its members or its
21 beneficiaries that, in the Fund's opinion, they
22 were being overcharged by Walgreens?

23 A Absolutely not.

24 Q The Fund could have -- strike that.

